



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 8610928

Date: DEC. 22, 2020

**Appeal of Nebraska Service Center Decision**

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a physician and researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was an orthopedic surgery resident at the [redacted]. The record indicates that his duties involved both clinical work and conducting arthroplasty research. He proposes to complete his medical training and pursue a position as an academic surgeon, continuing his research relating to [redacted] orthopedic surgery. Regarding his future plans, the Petitioner provided documentation showing his acceptance of an orthopedic surgery fellowship at the [redacted] Institute at [redacted] University. For the reasons discussed below, we conclude that the Petitioner has established eligibility for a national interest waiver under the *Dhanasar* framework.

### A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his medical research involving joint arthroplasty. Specifically, his proposed research is aimed at [redacted] arthroplasty (joint replacements).” The record includes a letter from [redacted] Chair of the Department of Orthopedic Surgery at the [redacted], indicating that the Petitioner's current work is aimed at determining “the minimum required follow-up for studies reporting patient outcomes following hip and knee replacements. [The petitioner's] goal is to standardize [redacted] for research projects in his field as a way to cut [redacted] costs and maximize the output of [redacted] data.”

In his decision, the Director determined that the Petitioner's proposed endeavor has substantial merit. Based upon the evidence in the record concerning the increasing number of [redacted] surgeries in the United States and the mortality risk [redacted] after surgery, we agree with the Director that the Petitioner's [redacted] research has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. As evidence that the benefit of his proposed work has broader implications in the field of medicine, and more specifically orthopedic surgery, he submitted reference letters describing how his research involving arthroplasty stands to affect medical strategies for [redacted]. In addition, the Petitioner has submitted documentation of his ongoing research and its publication which indicates that the benefit of his proposed work has broader implications, as the results are disseminated to other experts in his field through medical journals and conferences. As the Petitioner has demonstrated both the substantial merit and national

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<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

importance of his proposed arthroplasty research, the record supports the Director's determination that he meets the first prong of the *Dhanasar* framework.<sup>4</sup>

## B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, medical certifications and license, published and presented work, awards, peer review activity, and documentation of numerous articles that cited to his research findings. In addition, the Petitioner offered reference letters describing his expertise in orthopedic surgery research and his past record of success in that field.

In his decision, the Director stated that because the Petitioner listed orthopedic surgery resident as his proposed employment on Forms I-140 and ETA-750B, and because he acknowledged in his statements that his work includes both arthroplasty research and clinical patient care, the fact that he possessed only a "Training Certificate" medical license at the time of filing renders him insufficiently positioned to advance his proposed endeavor. In his appeal brief, the Petitioner emphasizes that he plans to continue to conduct research in his field, which does not require a medical license.<sup>5</sup> Because we have already determined that to the extent that his proposed endeavor does involve patient care, these activities do not have a broader impact and so are not of national importance, we need not determine whether the Petitioner has established that he is well positioned to advance his clinical activities. Our analysis under this prong therefore will focus solely on whether he is well positioned to advance his proposed orthopedic surgery research.<sup>6</sup>

Several expert references identify specific examples of how the Petitioner's arthroplasty research has affected the field. For example, with respect to [redacted] [redacted] System Chief of Joint Reconstruction and Vice President of Strategic Initiatives at [redacted] Hospital in [redacted] stated that the Petitioner's work "showed that those on long-term [redacted] had significantly higher 5-year survival rates compared to those who were not [redacted] Furthermore, [the Petitioner] was able to detect exactly which group of patients [redacted] were most likely to benefit from this treatment." [redacted] further indicated that the Petitioner's paper on this topic in *Journal of Bone and Joint Surgery* "has been cited in numerous follow-up studies, textbooks, and lectures on this topic. Furthermore, for this project, [the Petitioner] won the [redacted] *Current Concepts in Joint Replacement* yearly prize for best clinical research." The record includes the Petitioner's Google Scholar profile page indicating that this paper has received 56 citations. The Petitioner also provided his [redacted] award certificate from the [redacted]

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<sup>4</sup> The Petitioner acknowledges that at least a portion of his proposed endeavor will involve the care and treatment of patients. While these endeavors have substantial merit, the record does not establish that his clinical work stands to impact the orthopedic surgery field or the U.S. healthcare industry more broadly, as opposed to being limited to the patients he serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as an orthopedic surgeon does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>5</sup> The Petitioner's appellate submission includes his September 2019 license to practice medicine in the state of Ohio.

<sup>6</sup> We note that the Petitioner's supervisor at the [redacted] submitted a letter stating: "Having chosen the career path of an academic surgeon, [the Petitioner] has made research a main part of his career." In addition, the Petitioner's response to the Director's request for evidence makes clear that he claims eligibility for a national interest waiver based on his "previous and ongoing research activity on behalf of the [redacted]"

[redacted] and *Current Concepts in Joint Replacement* “for contributions to scientific knowledge and patient care.”

In addition, [redacted] Director of Research for Arthroplasty Service at [redacted] Hospital as part of [redacted] Medical School, explained that “[redacted] joint replacements have always been challenging to diagnose as there is no single test able to reliably detect this complication.” She stated that “[b]y measuring [redacted] of patients before and after treatment in addition to following their clinical outcome in the long run, [the Petitioner] was able to shed light on this issue and determine which markers can detect [redacted]” [redacted] asserted that this work “was a particularly important study to support our clinical practice, as there was no previous clinical evidence published on this topic. . . . [T]here is a pressing need for additional strategies to treat and prevent these [redacted] and [the Petitioner’s] work has been invaluable in this respect.”

Furthermore, [redacted] professor of Orthopedic Surgery at [redacted] University, asserted that the Petitioner “has made significant scientific contributions” relating to [redacted] of the hip and knee, and that he “has proved to be a high output clinical researcher in multiple orthopedic specialties, impacting clinical practice.” [redacted] further stated that the Petitioner “has already become a recognized researcher in his field with at least 18 publications in peer reviewed journals, 2 book chapters, and numerous posters and oral presentations in national and international conferences.” As corroborating documentation regarding the significance of his work, the Petitioner offered citation evidence showing that his articles have been frequently cited by independent researchers. This documentation helps demonstrate that the Petitioner is well positioned to advance his proposed research in the United States.

The Petitioner’s experience and expertise in his field, published and presented work, citation evidence, record of success contributing to various clinical research projects, and progress in arthroplasty research position him well to advance his proposed endeavor. Accordingly, the record demonstrates that the Petitioner satisfies the second prong of the *Dhanasar* framework.

### C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As a physician and researcher, the Petitioner possesses considerable experience and expertise in research involving orthopedic surgery [redacted] The record also demonstrates the widespread benefits associated with research progress in [redacted] In addition, the Petitioner has documented his past successes in advancing arthroplasty research and publishing influential research findings. Based on the Petitioner’s track record of successful research and the significance of his proposed work to advance U.S. healthcare interests, we conclude that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

## III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We conclude that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is sustained.